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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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10 BEVERLY NEHMER, et al.
11 Plaintiffs,

No. C86-6160 TEH

ORDER RE CLL CLAIMS
PROCEDURE

12 v.

13 UNITED STATES DEPARTMENT
14 OF VETERANS AFFAIRS,
15 Defendants.
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18 On July 24, 2006, the Court held a telephonic status conference to assess defendant
19 United States Department of Veterans Affairs' compliance with the Court's Order of April
20 28, 2006 entitled Order Denying Defendant's Motion for Stay Pending Appeal and
21 Establishing Retroactive Benefits Claims Procedure ("April 28 Order"). Based on the
22 representations made by counsel for both parties in their written submissions and in their oral
23 statements, it is apparent that defendant has begun to establish mechanisms to comply with
24 the procedural steps outlined in the April 28 Order, but that the pace of progress in
25 adjudicating claims and making retroactive payments to class members is woefully
26 inadequate.

27 Defendant estimates that it will adjudicate and make payment on claims at a rate of
28 100 claims files every 120 days, and that the initial group of 1,453 claimants will take 3.5

1 years to adjudicate. (*See* Joint Status Statement [“JSS”] filed June 26, 2006, Exhibit 2,
2 Responses to Questions 10&11). Following that time frame, defendant would take an untold
3 number of years to adjudicate and make payment on the additional claimants among the
4 24,011 in the “Mailing Group.” Based on this information alone, the Court has grave
5 concern as to defendant’s compliance with the April 28 Order’s requirement that defendant
6 shall act in good faith to use all resources at its disposal to adjudicate CLL claims and make
7 retroactive payments as quickly as possible. (April 28 Order ¶ 4).

8 Upon detailed review of all submissions and oral representations by defendant, the Court
9 has determined that VA’s estimate of 3.5 years to review the initial group of files simply does
10 not comport with the underlying data. The Court explains as follows. Defendant has
11 represented, through the declaration of Thomas Pamperin, that each claims file requiring
12 “additional development” could be reviewed in approximately 8.45 hours, and that less
13 complex files could be reviewed in considerably shorter time. (Declaration of Thomas
14 Pamperin re Defendant’s Motion for Stay Pending Appeal, filed 2/10/06, at ¶ 15). In his
15 declaration, Mr. Pamperin estimated that 25 percent of all claims files would require
16 “additional review.” (*Id.*). During the telephonic status conference, counsel for plaintiffs
17 stated that many files are straightforward and will take less than 8.45 hours. Counsel for
18 defendant stated that some files could be reviewed more quickly, but that many will require
19 the 8.45 hours because they require medical expertise.

20 Defendant also has represented that “VA has assigned the entire Philadelphia
21 Resource Center [“PRC”] staff to the Nehmer CLL project on a full-time basis.” (*See* JSS,
22 Exhibit 2, Response to Question 7). In response to a query from the Court at the telephonic
23 conference, defense counsel represented that twenty (20) people are on staff at the PRC and
24 are devoted to the CLL project. Defendant has represented that each staff member has 1,576
25 available hours for work per year. (Pamperin Decl. at ¶ 15). Thus, each staff member works
26 approximately 131.3 hours per month.

1 Based on these numbers, the Court calculates that twenty individuals working 131.3
2 hours amounts to approximately 2,626 hours devoted to the *Nehmer* CLL process each
3 month. Even if every single file were to take the full 8.45 hours of “additional development”
4 (an estimate that is overly conservative by all accounts), the initial group of 1,453 claimants
5 would require approximately 12,277 hours. Dividing the 2,626 hours of the PRC staff into
6 12,277 leads to the conclusion that the PRC ought to be able to complete review of the initial
7 files in less than five months (4.68 months to be precise). In other words, the files should be
8 reviewed at a minimum rate of approximately 310 per month. In contrast, defense counsel
9 represented at the telephonic conference that he expects the office to complete somewhat
10 more than 40 files per month (which equates to completion of the initial group in
11 approximately 3 years). This is slightly faster than the estimate in defendant’s status
12 statement of 3.5 years, but the Court remains perplexed as to how defendant’s estimate could
13 be so high given its own underlying data.

14 Consequently, the Court hereby ORDERS that defendant electronically file and serve
15 the following documents no later than August 14, 2006:

16 1. A sworn declaration by the director of the Philadelphia Resource Center, or a
17 higher level official of the VA with supervisory authority over the PRC, attesting to the
18 number of staff, and their hours per year, devoted to the *Nehmer* CLL claims process. If this
19 is different than the twenty full-time staff members that has been represented to the Court, as
20 discussed above, a full explanation for the discrepancy shall be provided by the declarant,
21 with a separate submission by counsel.

22 2. A submission by counsel for defendant addressing the Court’s calculations
23 discussed above and providing a full explanation as to whether defendant agrees with these
24 calculations. Any disagreement with the calculations shall be explained completely and shall
25 be supported by sworn written testimony.

26 Defendant remains under court order to act with speed, diligence, and good faith, and
27 any actions to the contrary shall subject defendant to contempt proceedings and sanctions in
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1 accordance with the inherent authority of the Court. Furthermore, the in-court hearing set
2 during the telephonic conference for September 18, 2006 at 2:00 p.m. shall remain on
3 calendar. Following defendant's submissions in response to this Order, the Court shall issue
4 a pre-hearing order.

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6 IT IS SO ORDERED.

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9 Dated: August 4, 2006



THELTON E. HENDERSON
UNITED STATES DISTRICT JUDGE